



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 27, 1998

The Honorable John W. Segrest  
Criminal District Attorney  
McLennan County  
219 North 6th Street, Suite 200  
Waco, Texas 76701

Letter Opinion No. 98-030

Re: Whether a county judge may delegate authority to hear applications for liquor licenses to a district clerk or a county commissioner (RQ-961)

Dear Mr. Segrest:

In light of this office's decision in Letter Opinion 97-54 that the judge of a county court at law was not, for purposes of Alcoholic Beverage Code section 61.312, "another county officer" to whom the county judge could delegate the authority to hear liquor license applications, you ask whether such duties may be delegated to a county commissioner or a district clerk. In our view, they may.

Section 61.312 of the Alcoholic Beverage Code reads, in relevant part: "A county judge may file an order with the commissioners court of the county delegating to another county officer the duty to hear applications under this chapter." In Letter Opinion 97-54, this office was asked whether section 61.312(a) might be construed as a jurisdictional grant to a county court at law judge. Letter Opinion No. 97-54 (1997). We concluded that, because license hearings were administrative in nature and county court at law judges had no authority over a county's administrative business, the section could not be so construed, and that accordingly the county court at law judge was not "another county officer" for the purpose of section 61.312. *Id.* at 2.

Since county court at law judges cannot hear such applications, your county judge has asked whether county commissioners or the district clerk may do so when the county judge is unavailable.

You suggest that both county commissioners and district clerks are, for the purpose of section 61.312, other county officers. Your argument is based on the constitutional and statutory removal provisions--article V, section 24 of the constitution and section 87.012 of the Local Government Code--both of which describe district clerks and county commissioners as county officers. *See also Harris County v. Walsweer*, 930 S.W.2d 659, 666-67 (Tex. App.--Houston [1st Dist.] 1996, writ requested) (constables not merely precinct officers, but county officers). We agree. Absent a specific statutory bar of the sort at issue in Letter Opinion 97-54, both county commissioners and district clerks are county officers within the meaning of Alcoholic Beverage Code section 61.312.

We have not found, and you have not cited any such prohibition of administrative duties by the district clerk. Moreover, as you point out, the duties of a county commissioner are principally

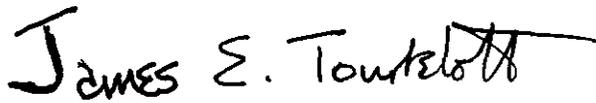
administrative. Accordingly, county commissioners and district clerks are county officers to whom the county judge may delegate the authority to hear liquor license applications pursuant to section 61.312.

Your brief further takes up the question of incompatibility of office, concluding that no conflicting loyalties are involved in the commissioner or district clerk's taking up this duty. While we agree with your conclusion, we are uncertain that it is necessary to reach this question. When the county judge delegates his duty, in our view, he has not created a new office or employment. Rather, section 61.312 merely adds another potential duty to those of the "other county officers" on whom the judge may confer his authority. See *First Baptist Church v. City of Fort Worth*, 26 S.W.2d 196, 197 (Tex. Comm'n App. 1930, judgm't approved) (imposition of new duties on public officer does not create new office).

### S U M M A R Y

A district clerk or county commissioner is, for the purpose of Alcoholic Beverage Code, "another county officer" to whom the county judge may delegate the authority to hear liquor license applications.

Yours very truly,



James E. Tourtelott  
Assistant Attorney General  
Opinion Committee